The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CASIMIR M. WOJCIK et al.

Appeal No. 2002-0785
Application No. 09/083,681

ON BRIEF

Before THOMAS, FLEMING and BARRY, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 9 through 20. Claims 1 through 8 have been cancelled.

Invention

The invention relates to a system for providing efficient management and fulfillment of customer's orders in a food processing and distribution environment. See page 1 of Appellants' specification. The invention has the ability to officially receive customer's orders, process them, create appropriate financial records and coordinate this information with inventory and manufacturing functions to prepare and load consolidated shipments for transportation to a customer. See page 3 of Appellants' specification. Also, the system includes a purchasing system based upon an electronic catalog that streamlines the purchasing function by using blanket vendor orders to approve the purchase of the necessary materials to support the system. See page 1 of Appellants' specification. Figure 37 illustrates this standardized process and end solution for creating an electronic catalog and system to support it. Figure 38 illustrates the relationship of an electronic catalog to various components using it. Figure 39 illustrates the information stored in the electronic catalog. Figure 40 illustrates how the electronic catalog accesses information in

various databases. See page 8 of Appellants' specification. Referring to Figure 37, there is shown a process of standardized purchasing. By standardizing purchases, the process of acquiring materials for the system is streamlined. This is accomplished by creating blanket vendor agreements that have sufficient data on quantity, shipments, charges, delivery times and availability that this information can be entered into an electronic catalog for use by a user having access to the system. See pages 49 and 50 of Appellants' specification.

Independent claim 9, present in the application, is representative of the claimed invention and is thereby reproduced as follows:

9. A method for creating an electronic catalog and processing purchase requests, comprising:

requesting a vendor quotation;

creating a blanket vendor order;

entering the blanket vendor order in the electronic catalog, wherein the electronic catalog comprises a plurality of items, quantities, shipment charges, delivery times and availabilities;

creating a pre-approved budget;

creating a purchase request;

requesting an item from the the [sic] plurality of items electronic catalog using the purchase request;

communicating said order from the electronic catalog to a vendor;

receiving acknowledgment of the communicated order;

receiving the ordered item; and

recording receipt of said item.

References

The references relied on by the examiner are as follows:

Schlafly	4,734,858	Mar. 29, 1988
Shavit et al. (Shavit)	4,799,156	Jan. 17, 1989
Roach et al. (Roach)	5,434,394	July 18, 1995

Rejections at Issue

Claims 9, 19 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Shavit. Claims 10 through 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roach in view of Shavit. Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schlafly in view of Shavit and Roach.

Throughout our opinion, we will make reference to the Briefs[1] and the Answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellants and the Examiner, for the reasons stated ***infra***, we reverse the Examiner's rejection of claims 9 through 20 under 35 U.S.C. § 103.

For all the rejections, the Examiner relies on Shavit for the teaching of creating a blanket vendor order and entering the blanket vendor order in the electronic catalog. See pages 4, 7, 14, 15 and 16 of the Examiner's Answer. Furthermore, we note that independent claim 9 recites "creating a blanket vendor order; entering the blanket vendor order in the electronic catalog." Claim 10 recites "means for creating an electronic catalog based on a blanket vendor agreement." Claim 17 recites "creating a blanket vendor agreement." Claim 18 recites

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[1] Appellants filed an Appeal Brief on August 23, 2001. Appellants filed a Reply Brief on January 7, 2002. The Examiner mailed out an Office Communication on January 22, 2001 stating that the Reply Brief has been entered.

"creating a blanket vendor order; entering said blanket vendor order into an electronic catalog." The Examiner argues that Shavit's disclosed "umbrella agreement" found in column 12, lines 60 and 61, reads on Appellants' claimed blanket vendor order. See the above-mentioned pages of the Examiner's Answer as well as pages 18 through 20.

Appellants argue that the claimed "blanket vendor order" is not the same as the umbrella agreement disclosed in Shavit. Appellants argue that a blanket order is an order which covers (blankets) the sale of merchandise for a number of items for possible delivery for extended periods of time. An example of a blanket vendor order is an agreement to supply all goods manufactured by a vendor over a specified time, such as widgets produced by a factory within a calendar year. Thus, a blanket order may be not limited by time or amount. See page 7 of the Appellants' Brief.

In response, the Examiner argues that there is not such a definition in Appellants' Specification which limits the definition of a blanket order to be defined by the Appellants as stated in the Brief. See page 18 of the Examiner's Answer.

Appellants respond in the Reply Brief stating that the definition given for a blanket order is the ordinary meaning and that the Examiner erred in not giving the term "blanket vendor order" its plain meaning when interpreting the claim. See pages 5 and 6 of the Reply Brief.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). ***See also In re Piasecki***, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. ***In re Fine***, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. ***See also Piasecki***, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In

reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." ***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

As our reviewing court states: "The terms used in the claims bear a "heavy presumption" that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Tex. Digital Sys., Inc. v. Telegenix, Inc.***, 308 F.2d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. (Tex.) 2002), ***cert. denied***, 123 S.Ct. 2230 (2003).

"Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted" (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a

case, the inconsistent dictionary definition must be rejected." ***Tex. Digital Sys.***, 308 F.3d at 1204, 64 USPQ2d at 1819. ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); ***Id.*** (***citing Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." ***Tex. Digital Sys.***, 308 F.3d at 1204, 64 USPQ2d at 1819. "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." ***Id.***

Turning to ***Webster's New World Dictionary***, Third College Edition, we find that the definition given for "blanket" most pertinent to the issue here is "covering a group of conditions or requirements; including many or all items (a

blanket insurance policy)."[2] From this definition, we find support for the Appellants' argument that a blanket vendor order is an order which covers the sale and merchandise of a number of items for possible delivery over an extended period of time.

Now that we have properly determined the scope of the term "blanket vendor order" as recited in the claims, we now turn to the teachings of Shavit.

The Federal Circuit reviews the Board's ultimate conclusion of obviousness without deference, and the Board's underlying factual determinations for substantial evidence. ***In re Huston***, 308 F.3d 1267, 1276, 64 USPQ2d 1801, 1806 (Fed. Cir. 2002) ***citing In re Gartside***, 203 F.3d 1305, 1316, 53 USPQ2d 1769, 1776 (Fed. Cir. 2000). "The Board's findings must extend to all material facts and must be documented on the record, lest the 'haze of so-called expertise' acquire insulation from accountability." ***In re Lee***, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). "To establish inherency, the extrinsic

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[2] ***Webster's New World Dictionary***, Third Edition, copyright 1988, page 146. Copies of pertinent pages are provided to the Appellants.

evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" ***In re Robertson***, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) ***citing Continental Can Co. v. Monsanto Co.***, 948 F.3d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." ***Id.*** at 1269, 20 USPQ2d at 1749 (***quoting In re Oelrich***, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981).

We note that Shavit teaches that the typical distributor's menu may present catalogue/price list inquiry, enter/modify request for quotations, review proposals, enter an **umbrella agreement**, enter/amend/confirm an **order**, inquiry and report, enter/review payments, and mortgage of orders/invoices. See Shavit, column 12, lines 58-63 (emphasis added). [We note that the term "umbrella agreement" is separate from an order. We note that Shavit has not referred to an umbrella agreement in another part of the patent and Shavit has not given a definition for the term "umbrella agreement."] Upon our review of Shavit,

we fail to find anything within Shavit other than what we have found in column 12, lines 58-63 of Shavit.

From reviewing the disclosure, the umbrella agreement is listed separately from the order that the customer would make. Shavit is otherwise silent as to the meaning of umbrella agreement. We find no support for the Examiner's finding that the umbrella agreement would be the same as a blanket vendor order. If anything, we would find that the umbrella agreement would be separate from the order and may be, in fact, directed to other legal requirements of the transaction, such as what would the parties do if they would enter into a dispute or one party would become bankrupt. Thus, we are unable to find that Shavit teaches a blanket vendor order as recited in Appellants' claims.

In view of the foregoing, we will not sustain the Examiner's rejection of claims 9 through 20 under 35 U.S.C. § 103.

REVERSED

JAMES D. THOMAS
Administrative Patent Judge

MICHAEL R. FLEMING
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

) BOARD OF PATENT APPEALS AND INTERFERENCES

MRF:psb

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